

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Kailash Chandra

Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.303/2005

DATE OF ORDER

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July 24, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Ramesh Purohit, for the petitioner.
Mr.Ashok Upadhyaya, P.P.

BY THE COURT:

Heard learned counsel for the parties.

The only point argued by the learned counsel for the petitioner is that Judicial Magistrate, Chhoti Sadri (for short 'the trial court' hereinafter) by order dt. 13.3.2002, dismissed the application filed by the non-petitioner No.2. Under section 125 Cr.P.C. That order was challenged by the non-petitioner No.2 before the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Pratapgarh (for short 'the revisional court' hereinafter). The revisional court vide order dt. 7.7.2003, allowed the revision setting aside the order of the trial court dt. 13.3.2002 and

remanded the matter to the trial court to decide afresh on hearing the parties. By order dt. 19.6.2004, the trial court allowed the application filed by the non-petitioner and granted monthly allowance of maintenance at the rate of Rs.500/- each per month in favour of non-petitioner No.2 and her minor son from the date of application w.e.f. May, 2000. The petitioner challenged the order dt. 19.6.2004 before the revisional court. The revisional court dismissed the application filed by the petitioner.

It is contended by the learned counsel for the petitioner that the order awarding monthly allowance of maintenance from the date of application is erroneous. The trial court at best could have awarded the monthly allowance of maintenance from the date of its order.

Keeping in view a Division Bench decision of this Court in Smt. Savita Sharma vs. Shri Krishan Murari, **1990 (1) RLR 400** wherein this Court held that the maintenance should be from the date of application and the fact that both the courts below exercised the discretion in granting the monthly allowance of maintenance from the date of application under section 125(2) Cr.P.C., in my view, it cannot be said that the order granting monthly allowance of interim maintenance from the date of

application would result in serious miscarriage of justice or abuse of process of any court.

Sub-section (2) of section 125 Cr.P.C. provides that the monthly allowance of maintenance may be awarded from the date of the order, or, if so ordered, from the date of the application.

In the instant case, exercising discretion under sub-section (2) of section 125 Cr.P.C. the trial court granted the monthly allowance of maintenance from the date of order and the revisional court did not find any error in exercising of such discretion. In the circumstances, therefore, no case for interference in the inherent jurisdiction by this Court is made out. It is settled law that powers under section 482 Cr.P.C. are to be exercised sparingly, consciously and in exceptional cases. The case in hand is not of exceptional nature.

The petition is, therefore, dismissed. Ad interim stay order dt. 23.3.2005 is vacated. The stay petition also stands dismissed.

(H.R.PANWAR),J.

m.asif/-